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6	UNITED STATES DISTRICT COURT
7	DISTRICT OF NEVADA
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9	PAUL PROVENZANO,
10	Petitioner, 3:12-cv-00500-LRH-VPC
11	vs. ORDER
12	ROBERT LEGRANDE, et al.,
13	Respondents.
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15	Paul Provenzano, a Nevada prisoner, has submitted a petition for a writ of habeas corpus,
16	pursuant to 28 U.S.C. § 2254 (ECF #1-1) and has now paid the filing fee (see ECF #4). It appears from
17	the petition that it was submitted outside the applicable limitations period and may be subject to
18	dismissal on that basis.
19	The Antiterrorism and Effective Death Penalty Act (AEDPA) imposes a one-year statute of
20	limitations on the filing of federal habeas corpus petitions. 28 U.S.C. § 2244(d). The one-year time
21	limitation can run from the date on which a petitioner's judgment became final by conclusion of direct
22	review, or the expiration of the time for seeking direct review. 28 U.S.C. § 2244(d)(1)(A). Further, a
23	properly filed petition for state postconviction relief can toll the period of limitations. 28 U.S.C. §
24	2244(d)(2).
25	According to the habeas petition, petitioner's judgment of conviction was entered on January
26	31, 2008. Apparently petitioner did not file a direct appeal and thus the judgment of conviction became

final on March 3, 2008. See Nev. R. App. P. 4(b). He states in his federal petition that on May 24, 2010,

he filed a post-conviction petition for writ of habeas corpus with the state district court (see ECF #1-1

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at 1). The instant federal habeas petition was mailed to the court or handed to a corrections officer for 2 mailing on August 30, 2012, well beyond the one-year time limitation contained in the statute. 3 Moreover, the court may take judicial notice of its docket and observes that petitioner initiated 4 a habeas petition before this court regarding the same judgment of conviction on May 25, 2009. See 5 Provenzano v. Warden Palmer, 2:09-cv-00973-KJD-RJJ. Even at that earlier date, the court issued an 6 order to show cause why that petition should not be dismissed as untimely (ECF #4), which resulted in 7 petitioner filing a notice of voluntary dismissal of the petition (ECF #5). 8 Petitioner may be entitled to equitable tolling of the one-year limitations period if he can 9 establish that he diligently pursued his right and some extraordinary circumstance stood in his way. See 10 Calderon v. United States District Court (Beeler), 128 F.3d 1283, 1288 (9th Cir. 1997), overruled in 11 part on other grounds, Calderon v. United States District Court (Kelly), 163 F.3d 530 (9th Cir. 1998); 12 Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005). The petitioner will be given the opportunity to show 13 that either the instant petition was not filed beyond the one-year statute of limitations, or that he is entitled to equitable tolling of the time limitation. 14 15 IT IS THEREFORE ORDERED that petitioner shall have thirty (30) days from the entry of this order to show cause and file such proof he may have to demonstrate that the petition for writ of 17 habeas corpus was timely filed within the one-year time limitation or that he is entitled to equitable tolling of the time period. 18 19 IT IS FURTHER ORDERED that if petitioner is unable to demonstrate that the petition for writ 20 of habeas corpus was filed within the limitations period, the court will enter an order dismissing the 21 petition. Elsihe 22 DATED this 8th day of November, 2012. 23 24 25 LARRY R. HICKS

UNITED STATES DISTRICT JUDGE

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